IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI NORTHERN DIVISION

EDDIE F. INGRAM, Plaintiff)	
vs.)	Civil Action No. 3:17-cv-352-DPJ-FKB
GSI SERVICES, LLC d/b/a EMERALD TRANSFORMER, Defendant)	
Dejenuani	,	

MOTION FOR SUMMARY JUDGMENT

COMES NOW Defendant GSI Services, LLC, d/b/a Emerald Transformer ("GSI") and moves the Court for entry of summary judgment in its favor and requesting that all claims against it be dismissed with prejudice. In support, GSI would show the following:

- 1. Eddie Ingram brought claims against GSI under the Americans with Disabilities Act/Americans with Disabilities Amendments Act ("ADA") and the Age Discrimination in Employment Act ("ADEA") arising out of his termination from GSI.
- 2. The Court should dismiss Mr. Ingram's disability claims with prejudice. First, the doctrine of judicial estoppel bars his ADA claim because his sworn petition to settle a workers' compensation claim negates an essential element of the ADA claim, that he was a qualified individual. Second, Mr. Ingram has no direct evidence supporting the ADA claim. Third, Mr. Ingram cannot meet his summary judgment burden of establishing disability discrimination circumstantially because GSI did not replace Ingram with a non-disabled employee. Finally, any claim for ADA retaliation must be dismissed because retaliation was never alleged in the EEOC charge and is unexhausted and, now, time-barred.

- 3. Mr. Ingram only alleged a claim of "comparator" age discrimination. But he cannot prove such a claim circumstantially because there is no evidence that GSI replaced Ingram with a younger worker.
 - 4. In support of this Motion, GSI attaches and incorporates the following exhibits:
 - a. **Exhibit "A"** Charge of Discrimination;
 - b. **Exhibit "B"** Excerpts from Deposition of Jason Peacock;
 - c. **Exhibit "C"** Excerpts from Deposition of Eddie Ingram;
 - d. **Exhibit "D"** Excerpts from Deposition of Meredith Allred;
 - e. **Exhibit "E"** Sworn Petition to Approve Workers' Compensation Settlement;
 - f. **Exhibit "F"** Excerpts from GSI Responses to Interrogatories;
 - f. **Exhibit "G"** Order Approving Workers' Compensation Settlement.
- 5. GSI is concurrently filing a memorandum of authorities supporting this motion, in accord with the provisions of L.U. Civ. R. 7(b)(4).

WHEREFORE, PREMISES CONSIDERED the Defendant GSI Services, LLC d/b/a Emerald Transformer, requests that the Court enter summary judgment in its favor, dismissing all claims against it with prejudice. Alternatively, GSI requests any relief that would be proper in the circumstances.

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Dated: May 9, 2018. Respectfully submitted,

GSI SERVICES LLC d/b/a EMERALD TRANSFORMER

By: <u>s/H. Richard Davis, Jr.</u>

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CERTIFICATE OF SERVICE

I, H. Richard Davis, one of the attorneys for the Defendant, do hereby certify that I have, this day, filed the foregoing with the Clerk of Court via the CM/ECF system, which has caused a true and correct copy to be served on all counsel of record.

Dated: May 9, 2018.

s/H. Richard Davis, Jr. H. Richard Davis, Jr.